

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

In re:)	
)	CHAPTER 13
ARTHUR B. DEAN, JR.)	
)	
and)	
)	CASE No. 01-37157-DOT
AMY L. DEAN,)	
)	
Debtors.)	ADVERSARY PROCEEDING
)	NO. 04-3101-DOT
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ARTHUR B. DEAN, JR.)	
)	
and)	MOTION FOR AN ORDER
)	DEEMING DEFENDANTS'
)	REQUEST FOR
AMY L. DEAN)	ADMISSIONS AS
)	ADMITTED
Plaintiffs,)	
v.)	
)	
LAPLAYA INVESTMENTS, INC.)	
)	
and)	
)	
ROBERT HINSEN, TRUSTEE,)	
)	
Defendants.)	

Come now Defendants LaPlaya Investments, Inc. and Robert
Hinson, Trustee, and hereby move this Court for an Order Deeming

Mary Snyder Barry
Virginia Bar No. 25148
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A Professional Corporation
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Of Counsel to Defendants

Defendants' Request for Admission Nos. 2 and 3 as Admitted by Plaintiffs and as grounds therefor states the following:

1. Federal Bankruptcy Rule R7036(a) states, in pertinent part, the following:

... . The matter is admitted unless, within 30 days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter The answer shall specifically deny the matter or set forth the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. . . . If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served

2. That the Defendants served Requests for Admissions on counsel for Plaintiffs on July 2, 2004, requesting, inter alia,

Request No. 2: That the present amount secured by the first mortgage on the Subject Property is no more than \$160,741.00. [emphasis supplied]

Response: Admit that the value of the first mortgage was no more than \$160,741.00 on November 29, 2001 which is the date they filed their chapter 13 bankruptcy. [emphasis supplied]

Request No. 3: That the present amount secured by the second mortgage on the Subject Property is no more than \$73,570.64. [emphasis supplied]

Response: Admit that the value of the second mortgage was no more than \$73,570.64 on November 29, 2001 which is the date they filed their chapter 13 bankruptcy,

which amount was later confirmed by Homecomings Financial's Proof of Claim dated February 21, 2002.
[emphasis supplied]

3. That since both Requests No. 2 and 3 asked for an admission of the amount presently secured by the first and second Deeds of Trust, but the Plaintiffs only admitted an amount secured by each Deed of Trust on a date almost three years ago, which almost certainly could not as much, Plaintiffs should be held to have admitted the facts sought in Request for Admissions Nos. 2 and 3.

4. That Plaintiffs' time to file responses to Request for Admissions Nos. 2 and 3 has expired because more than 30 days has elapsed since the Plaintiffs were served with the Defendants' Request for Admissions.

5. That since Plaintiffs have therefore admitted that the total amount of the secured debt on the property having priority over LaPlaya's Deed of Trust is presently \$234,311.64, and the uncontroverted evidence is that the present value of Plaintiffs' Property is \$237,000.00, Defendants are entitled to judgment as a matter of law denying the Plaintiffs' request that the Court invalidate/extinguish the third mortgage lien of Defendants. See Ryan v. Homecomings Financial, 253 F.3d 778 CA 4 (Md.) 2001; Nobleman v. American Savings Bank, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993); Whitmore v. Household Financial Services, 2001 West Law 34047307 (2001).

WHEREFORE, the undersigned ask this Honorable Court to enter an Order Deeming Defendants' Requests for Admissions No. 2 and 3 as Admitted by Plaintiffs and awarding summary judgment in their favor denying the relief sought by the Plaintiffs in their Complaint.

LAPLAYA INVESTMENTS, INC. and
ROBERT HINSON, TRUSTEE

By: /s/ Mary Snyder Barry
Of Counsel

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By: /s/ Mary Snyder Barry
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Of Counsel to LaPlaya Investments, Inc.
And Robert Hinson, Trustee

STATEMENT OF GROUNDS AND AUTHORITIES

Federal Rules of Bankruptcy Procedure R 7036 and 7056.

I hereby certify that on the 20th day of August, 2004, a true copy of the foregoing Motion for an Order Deeming Defendants' Requests for Admissions as Admitted was mailed, postage prepaid, to:

Charles H. Krumbein, Esquire - Counsel for Debtors
Krumbein & Associates
1650 Willow Lawn Drive
Suite 300
Richmond, Virginia 23230

Robert E. Hyman, Esquire - Chapter 13 Trustee
P.O. Box 1780
Richmond, Virginia 23218-1780

/s/ Mary Snyder Barry
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